

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

STEVEN RICHARD WELL,

Petitioner,

v.

MARK THOMPSON,

Respondent.

Case No. 2:23-cv-00165-JNW-TLF

ORDER ON MOTION FOR
APPOINTMENT OF COUNSEL
(DKT. 6)

A. Appointment of the Federal Public Defender; Re-issue of Notice of Option of
Consent to U.S. Magistrate Judge

Plaintiff has filed a motion to appoint counsel. Dkt. 6. In “exceptional circumstances,” a district court may appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other grounds*, 154 F.3d 952 (9th Cir. 1998). In a habeas corpus case, the Court reviews the petition to determine whether it is frivolous on its face. *Anderson v. Heinze*, 258 F.2d 479, 483 (9th Cir. 1958). The Court also considers whether “the circumstances of a defendant or the difficulties involved in presenting a particular matter are such that a fair and meaningful hearing cannot be had without the aid of counsel.” *Dillon v. U.S.*, 307 F.2d 445, 447 (9th Cir. 1962).

Plaintiff asserts that he stands convicted of Second-Degree Murder in Snohomish County Superior Court, and has been given a sentence of life without parole. Dkt. 5, at 1. His allegations appear to be related to ineffective assistance of

1 counsel, DNA evidence, and a sentencing claim. Dkt. 5, at 3, 5, 7-8. Because plaintiff is
2 currently in the custody of Western State Hospital and states that he has a mental
3 disability, and the petition for habeas corpus shows he is unable to articulate his claims,
4 the Court **appoints the Federal Public Defender for the Western District of**
5 **Washington (FPD) as counsel for the Petitioner.** See generally, *Matter of Well*, 133
6 Wn.2d 433 (1997).

7 The Clerk shall provide copies of the petition, all documents in support thereof,
8 the Notice of Consent, and this Order to: Colin Fieman, Federal Public Defender,
9 Federal Public Defender's Office, 1601 Fifth Avenue, Suite 700, Seattle, Washington
10 98101. The FPD shall confer with Petitioner. If there is a conflict of interest with having
11 FPD represent petitioner in this case, FPD shall promptly advise the Court.

12 The Court's order of appointment will stand unless the FPD informs the Court by
13 **May 15, 2023**, that Petitioner objects to the Court's order appointing the FPD and
14 requests the appointment order be rescinded. The Clerk of the Court is directed to re-
15 issue the Notice of Option of Consent to Magistrate Judge Theresa L. Fricke after
16 Counsel has appeared on behalf of Petitioner.

17 B. Answer

18 The Court amends the previous order (Dkt. 8) regarding the deadline for the
19 Answer.

20 Within **sixty (60)** days after Counsel has appeared on behalf of the Petitioner,
21 the Respondent shall file and serve an answer in accordance with Rule 5 of the Rules
22 Governing Section 2254 Cases in United States District Courts. As part of such
23 answer, Respondent shall state whether Petitioner has exhausted available state
24
25


1 remedies and whether an evidentiary hearing is necessary. Respondent shall not file a
2 dispositive motion in place of an answer without first showing cause as to why an
3 answer is inadequate.

4 C. Noting Answer

5 The answer will be treated in accordance with LCR 7. Accordingly, on the face of
6 the answer, Respondent shall note it for consideration on the fourth Friday after filing.
7 Petitioner's response and Respondent's reply shall be filed as set forth in LCR 7(d).

8 The Clerk is directed to send a copy of this Order to Petitioner, and to Colin
9 Fieman, Federal Public Defender, as described above.

10 Dated this 25th day of April, 2023

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13 
14 Theresa L. Fricke
United States Magistrate Judge